MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7263 OF 2006

MAHESH CHANDRAKANT DHUMAL .. PETITIONER

Vs.

STATE OF MAHARAHSTRA & ORS. .. RESPONDENTS

Mr. A. M. Joshi for petitioner

Mr. C. R. Sonawane, AGP

CORAM: SMT. RANJANA DESAI &

SMT. R. S. DALVI,JJ.

DATE: DECEMBER 14, 2007.

P.C.

. The petitioner has challenged in this petition judgment and order dated 15/2/06 passed by the 2nd respondent Scheduled Tribe Certificate Scrutiny Committee ("Scrutiny Committee" for short). By the impugned order dated 2/1/97, the caste certificate granted by the Deputy Collector, Thane, stating that the petitioner belongs to Mahadeo Koli Scheduled Tribe is cancelled and confiscated.

2. We have heard at considerable length Mr.

Joshi, learned counsel appearing for the petitioner. With the assistance of learned counsel, we have carefully gone through the impugned order.

3. Mr. Joshi contended that the Scrutiny Committee has observed that caste of the petitioner's uncles Sitaram Babu Koli, Hanumant Babu Dhumal, Namdeo Baburao Dhumal and Jayant Baburao Dhumal is shown as Hindu Koli and Koli and these documents pertain to period 1933 to 1947. The Scrutiny Committee has further observed that the petitioner's father's caste is recorded as Hindu Koli in the school record. The Scrutiny Committee has observed that being the oldest document this document has got more probative value. Learned counsel pointed out that subsequent documents of the other relatives of the petitioner pertaining to the period 1951, 1954 and 1950 which show that they belong to Hindu Mahadeo Koli have been ignored by the Scrutiny Committee. Learned counsel submitted that this is a totally erroneous approach.

4. He drew our attention to the Government Resolution ("G.R". for short) dated 17/9/68 which

states that the Government has decided that it is not necessary to mention Caste and Sub-Caste in the application forms for admissions to educational institutions, leaving certificates and other registers or record of such institutions etc. in respect of pupils other than the pupils belonging to Backward Class. The G.R. further states that the Government is accordingly pleased to direct that the entries appearing in Appendix 15,16,18 & 19 of the Education Manual, respectively relating to admission in Government (now Zilla Parishad) Secondary Schools, form of register of application for admission to such schools, leaving certificates form and form of general register in Government (now Zilla Parishad) Secondary Schools should be amended as shown in Column (4) of the statement below.

5. Learned counsel contended that this G.R. states that it is not necessary to make mention of Sub-Caste in the school records obviously because quite often mistakes are committed while mentioning and noting down the castes. He submitted that the Scrutiny Committee ought to have kept this in mind while dealing with the petitioner’s case. He submitted that, the Scrutiny Committee could not

have been carried away by the fact that in the entries pertaining to period 1933 to 1947, the relatives of the petitioner are shown as Hindu Koli and Koli.

6. Secondly learned counsel urged that after the Presidential Order the benefit of caste reservation was available to certain areas only. This area restriction was lifted in the year 1976 and the benefit was made available to all persons belonging to Scheduled Tribes in the entire Maharashtra State. Therefore, no inference can be drawn that the petitioner's other relatives manipulated the record to make it appear that they belong to Hindu Mahadeo Koli Scheduled Tribe to grab benefits under the Presidential Order because the benefits were made available only after 1976.

7. In this connection learned counsel relied on judgment of this court in **Swapna Badalsingh Raghuvanshi v. State of Maharashtra & Ors., 2004(2) Bom. C. R. 417**. In that case the documents indicated that the petitioner's father was Rajput Bhamta. The caste Rajput Bhamta was declared to be Vimukta Jati in the year 1961. This court held that documents which pertain to period

which is prior to that date had good probative value to indicate true caste of the petitioner. He submitted that on similar lines in this case since area restrictions were lifted in 1976, the documents prior to 1976 would have probative value and cannot be discarded.

8. Learned counsel then relied on the judgment of this court in **Raviprakash Babulalsing Parmar v. State of Maharashtra & Ors., 2004(1) Mh.L.J. 177**, where a Division Bench of this court has observed that inquiry into caste claim cannot proceed like a civil suit, It has, however, to comply with the principles of law of evidence and natural justice in the matter of hearing and decision. He pointed out that this court has held that if there is preponderance of pre-presidential order documentary evidence, such as Caste Certificate, School leaving Certificate those documents must be accepted without any further probe or scrutiny. This court has further observed that other documents, however, cannot be discarded only on the ground that they are post-Presidential order. That would be absurd and ridiculous. This court has further observed that the Committee cannot proceed on the presumption that all such documents are fabricated

and created for the purpose of getting reservation benefits. Learned counsel contended that, therefore, weightage must also be given to post presidential order documents.

9. Learned counsel then drew our attention to the reply submitted by the petitioner to the Scrutiny Committee and pointed out that in cases of certain persons where old record showed their relative's caste as Koli, their caste certificates showing them as belonging to Scheduled Tribe Mahadeo Koli were held valid by the Scrutiny Committee. However, in the case of the petitioner, the Scrutiny Committee arbitrarily adopted a different approach. Learned counsel lastly submitted that the constitution of the Scrutiny Committee is improper and, therefore, on that ground also the order must be set aside.

10. So far as the last submission of Mr. Joshi is concerned, admittedly this point is not raised in the petition. It was not even raised before the Scrutiny Committee. Therefore, it is not possible for us to entertain it.

11. So far as the principle laid down by this

Court in **Raviprakash Babulalsing Parmar's case (supra)** is concerned, there can be no dispute about it. It is pertinent to note that this court has observed that, if there is preponderance of pre-Presidential order documentary evidence, such as Caste Certificate, School leaving Certificate such evidence must be accepted without any further probe or scrutiny. That such orders have greater probative value has been laid down by the Supreme Court in **Madhuri Patil & Anr. v. Additional Commissioner Tribal Thane & Ors., AIR 1997 SC 2581**. In this case the relatives of the petitioner namely Sitaram Babu Koli, Hanumant Babu Dhumal, Namdeo Baburao Dhumal and Jaywant Baburao Dhumal are shown as Hindu Koli and Koli in documents which pertain to the period 1933 to 1947 respectively. In the light of the judgment in **Madhuri Patil's case**, therefore, the Scrutiny Committee has rightly held that they have greater probative value and they must be taken into account.

12. It is true that other entries which pertain to latter period may be taken into consideration in certain cases. Ultimately each case will have to be considered having regard to its circumstances and in the light of the entire material which is

placed before the court and the court may accept such evidence as it appears to it to have greater probate value. That is exactly what has happened in this case and we cannot fault the Scrutiny Committee for it.

13. So far as the argument of learned counsel regarding lifting of area restrictions is concerned, it is pertinent to note that this question was not raised before the Scrutiny Committee and the Scrutiny Committee has not alleged that latter documents were prepared to grab the benefit of reservation. All that the Scrutiny Committee has said is that in the facts of this case, the documents which pertain to the period 1933 to 1947 have greater probative value and, we concur with this view of the Scrutiny Committee.

14. In our opinion, the judgment of this court in **Swapna B. Raghuvanshi's case (supra)** will have to be confined to its own peculiar facts. We reiterate that oldest documents state that petitioner's relatives belong to Hindu Koli or Koli and if, that has weighed with the Scrutiny Committee no fault can be found with its reasoning. The conclusion of the Scrutiny Committee is in tune

with the Supreme Court's judgment in **Madhuri Patil's case (supra)**.

15. So far as the G.R. is concerned, that G.R. contains instructions for the future. No support can be drawn by the petitioner from that G.R. The averments made by the petitioner in his reply filed before the Scrutiny Committee which refer to certain cases where benefit was allegedly given to certain people on the basis of old record showing their relatives as Koli cannot help the petitioner. The petitioner has not produced any such orders. Morever each case is decided in the context of its own peculiar factual matrix. In the facts of this case, we entirely concur with the Scrutiny Committee that the documents produced before it do not support the petitioner's claim that he is Mahadeo Koli. Besides the Scrutiny Committee has verified the Tribe claim of the petitioner with reference to traits, characteristics and customs of the Mahadeo Koli community and observed that whatever information has been furnished by the petitioner is not associated with Mahadeo Koli Scheduled Tribe. Hence no case is made out by the petitioner to persuade us to take a different view. In our opinion, there is no substance in the

petition. The petition is dismissed.

JUDGE

JUDGE